No. 90-7675

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

R.A.V.,

Petitioner,

—against—

CITY OF ST. PAUL,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENT SUBMITTED BY THE CENTER FOR DEMOCRATIC RENEWAL, THE CENTER FOR CONSTITUTIONAL RIGHTS, THE NATIONAL CONFERENCE OF BLACK LAWYERS, THE NATIONAL COUNCIL OF LA RAZA, THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW, THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A., THE NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, THE NATIONAL LAWYERS GUILD, THE UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, THE NATIONAL INSTITUTE AGAINST PREJUDICE AND VIOLENCE, THE GREATER BOSTON CIVIL RIGHTS COALITION AND THE NATIONAL COALITION OF BLACK LESBIANS AND GAYS.

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CONSENT OF THE PARTIES

Amici Curiae file this brief with the consent of both parties in support of the position advanced by the respondent. Letters of consent have been sent under separate cover to be filed with the Clerk of the Court.

INTEREST OF AMICI CURIAE

The twelve organizations joining in the brief amici curiae (see Appendix) represent various segments of American society with diverse interests. They share a mutual concern about the severity and pervasiveness of bias-motivated violence, and urge the Court to affirm its and this nation's commitment to opposing this violence which reinforces historic inequality. Amici believe it is imperative that the Court enable states and cities to adopt legislation, within the parameters of the first amendment, to prohibit violence against people of color, women, and lesbians and gay men.

SUMMARY OF ARGUMENT

Cities and states across the country are facing a crisis of escalation of violence against people of color, women, lesbians and gay men, and Jewish people. Some local governments, recognizing the harm that is done to groups, individuals, and society at large by this bias-motivated violence, are attempting to deter and punish the atrocities with "hate crime" legislation, such as that of St. Paul Ordinance 292.02. The acts of violence, threats, and intimidation proscribed by these types of statutes are set against a backdrop of a historic reign of physical terror against the targeted groups. Current violence serves to reinforce and perpetuate long-established inequality, and the killings, beatings, arsons, and other injuries cause grave harm to individuals and groups alike.

The St. Paul Ordinance, narrowly construed by the Minnesota Supreme Court, proscribes only bias-motivated disorderly conduct that rises to the level of 1)

directed incitement of likely, imminent, lawlessness, Brandenberg, or 2) fighting words that are injurious or inciting immediate violence, Chaplinsky. The narrowing construction by the Minnesota Supreme Court thus confines the Ordinance to conduct that is explicitly outside of the protections of the first amendment. The Minnesota Court's interpretation of the Ordinance is authoritative, and it is that interpretation which must be reviewed by this Court. § 292.02, as judicially narrowed and as applied to the late-night cross burning on the lawn of a Black family's home, is constitutional.

Amici believe that the need to curb bias-related violence is so pressing and urgent that even if the Court were to find that some protected expression were implicated, the state has a compelling interest in restricting such terroristic conduct. The conduct prohibited by § 292.02, such as the cross burning allegedly committed by R.A.V, is not merely offensive and unpopular. Such conduct has been proven to be

the precursor, the trigger, the mobilizing event for violent rampage. The state has often stated its interest in eliminating racist and sexist violence, and the severe harms inflicted by such violence are well-documented. Given the context of multiple forms of violence inflicted against Blacks, Latinas and Latinos, Native American, Asian Americans, and women, the statute must be found to be a narrowly tailored means to serve a compelling state interest. In finding the Ordinance constitutional, this Court should support the efforts of localities to combat biased-threats and violence against people of color, women, lesbians, and gay men, within the parameters of the first amendment.

ARGUMENT

I. ST. PAUL ORDINANCE 292.02, AS NARROWED BY THE MINNESOTA SUPREME COURT AND AS APPLIED, REACHES NO PROTECTED SPEECH AND IS THEREFORE CONSTITUTIONAL

St. Paul Ordinance ch. 292, § 292.02 (1990)[1], as narrowly interpreted by the Minnesota Supreme Court, applies only to conduct falling outside the protections of the first amendment and is therefore constitutional. This Court has ruled that "in reviewing the constitutionality of the challenged [state] statute ..., we must abide by the narrowing constructions announced by the [state's highest court]... ." Posadas de Puerto Rico

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[1]St. Paul City Charter, Legislative Code and Administrative Code, ch. 292, § 292.02 (1990) (hereinafter § 292.02), reads:

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.

Ass'n. v. Tourism Co. 478 u.s. 328, 339 (1986). Minnesota Supreme Court's interpretation of § 292.02 is authoritative, and it is this interpretation which must be reviewed by the Court. Gooding v. Wilson, 405 U.S. 518 (1972), Kolender v. Lawson, 416 U.S. 352, 355 (1983). Thus, in determining whether § 292.02 is overbroad, this Court must abide by the Minnesota Court's narrowing construction, which confines the reach of the ordinance to activity not protected by the first amendment.

The Minnesota Supreme Court appropriately "construe[d] the statute to avoid constitutional problems." New York v. Ferber 102 S.Ct. 3348, 3361 (1982); Brockett v. Spokane Arcades, Inc., 472 U.S. 491 (1985). It therefore explicitly limited St. Paul ordinance 292.02 to "expressive conduct that amounts to 'fighting words' -- conduct that itself inflicts injury or tends to incite immediate violence, see Chaplinsky v. New Hampshire, 315 U.S. at 572... [and] conduct that is 'directed to inciting or producing imminent lawless

action and is likely to produce or incite such action.' Brandenberg v. Ohio, 395 U.S. at 447." In re R.A.V., 464 N.W.2d 507, 510 (Minn. 1991) cert. granted sub nom. R.A.V. v. St. Paul, MN, 111 S.Ct. 2795 (1991) (No. 90-7675) (hereinafter R.A.V.). So interpreted, there is no "real" and "substantial" overbreadth of the ordinance: it prohibits only conduct that is unprotected by the first amendment under Chaplinsky v. New Hampshire, 314 U.S. 568 (1942), and Brandenberg v. Ohio, 395 U.S. 444 (1969). Broadrick v. Oklahoma 412 U.S. 601 (1973); Ferber at 3361.

Petitioner asserts that "[t]he ordinance prohibits the expression of ideas where there is no showing that any dangerous or unlawful activity will result," Brief for Petitioner at 21. The Minnesota court, however, specifically construed § 292.02 to be limited to such situations: where fighting words by definition invite violence or cause injury, Chaplinsky, and where expression is both intended and likely to produce

imminent lawless violence, Brandenberg.[2] While the overbreadth doctrine, and the ability to challenge an overbroad or vague statute, Dombrowsky v. Pfister, 380 US. 479 (1965) remain vitally important to first amendment freedoms, § 292.02 is characterized by neither of the invalidating flaws of vagueness or overbreadth. § 292.02 is a vehicle for combatting conduct, outside of the protection of the first amendment, aimed at particular groups traditionally targeted for the incitement of violence and injury. § 292.02 does not generally suppress public presentation or "mere abstract teachings," Brandenberg at 448, of white supremist or Nazi thought and literature. It does not forbid racist or sexist viewpoints which subjugate groups of people: it is specific and narrow in its reach.

Where an appellate court does not limit the

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[2]In fact, the guidelines suggested by the ACLU are precisely met by the narrowing construction of the Minnesota court. Brief Amicus Curiae of the American Civil Liberties Union at 6, 19, R.A.V. (calling for threat directed at specific victim, intent to instill imminent reasonable fear of violence).

application of a statute to words that "have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed," as in Chaplinksy, the statute must be found to be overbroad. Gooding v. Wilson, 405 U.S. 518, 524 (1972). Such is not the case here: the Minnesota court explicitly construed the ordinance only to apply to that conduct prohibited by Brandenberg and Chaplinsky, and applied the statute appropriately to the facts in the case of R.A.V.

II. IF § 292.02 REACHES SOME PROTECTED SPEECH, THE STATE HAS A COMPELLING STATE INTEREST IN PROHIBITING SUCH CONDUCT

Because the statute as construed prohibits no activity protected by the first amendment, it need not be justified by a compelling state interest. However, even if the Court concludes that the statute reaches some protected speech, the statute should nonetheless

survive because it serves a compelling state interest and is narrowly drawn to serve that interest. Boos v. Barry, 108 S.Ct. 1157, 1164 (1988).[3] Petitioner repeatedly attempts to obscure the compelling state interest served by this ordinance by referring to the conduct that is prohibited as "unpopular," "insulting," "intolerant," "offensive," "disagreeable," "disturbing," "resented," and lacking "civility," Brief for Petitioner at 10, 14, 15, 16, 18, 21. Petitioner improperly analogizes this conduct to that which the Court has previously found protected by the first amendment: expression which is "provocative and challenging," has "unsettling effects," or "invites

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[3]This Court has, on numerous other occasions, upheld statutes which restricted expression on the basis of their content or subject matter. See, e.g., Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Posadas; Cornelius v. NAACP Legal Defense and Education Fund, Inc., 473 U.S. 788 (1985); New York v. Ferber, 458 U.S. 747 (1982); Haig v. Agee, 453 U.S. 280 (1981); FCC v. Pacifica Foundation, 438 U.S. 726 (1978); Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); Lehman v. City of Shaker Heights, 418 U.S. 298 (1974); Miller v. California, 413 U.S. 15 (1973); Watts v. U.S., 394 U.S. 705 (1969).

dispute, induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." Id. at 18, citing Terminiello v. Chicago, 337 U.S. 1, 3-4 (1949); U.S. v. Eichman, 496 U.S. ___, 110 S.Ct. 2404, 2406 (1990); Street v. New York, 394 U.S. 576, 591 (1969).

The conduct prohibited by St. Paul ordinance 292.02, as judicially interpreted and applied by the Minnesota Supreme Court, goes far beyond merely being offensive. Understood in context, cross burnings are more than "displays of intolerance" or "expressive conduct that the majority finds offensive or demeaning," despite Petitioner's characterization of them as such. Petition for Writ of Certiorari at 9, R.A.V. (hereinafter "Petition for Writ"). The acts prohibited by 292.02 amount to intimidation by threats of violence, and "[i]ntimidation by threats of physical violence is not

protected by the first amendment."[4] U.S. v. Lee, 935 F.2d 952, 956 (8th Cir. 1991) (holding that prohibition of conspiring to burn a cross to threaten or intimidate targeted individuals in the exercise of federally guaranteed right to rent and occupy a dwelling does not violate the first amendment). In upholding a conviction for a cross burning on the lawn of a Black family's home under 18 U.S.C. 241, the court of appeals for the 8th Circuit found that the nighttime cross burning on private property was

> ... . It was not mere advocacy, but an overt act of intimidation, which, because of its historical context, is often considered a precursor to or a promise of violence against Black people. ... To protect the inhabitants of this nation from such an attack on civil rights does not violate the first amendment.

See also U.S. v. Long, 935 F.2d 1207 (11th Cir. 1991) (when a cross was burnt on the lawn of a Black family in mostly white neighborhood, victim's race and specific circumstances can be considered to determine if victim was a "vulnerable victim" under sentence enhancement purposes).

Arguing that there is no compelling state interest and denying that any harm is done by intimidating conduct targeted against groups on the basis of race, color, creed, religion or gender, Petitioner further objects to judicial acknowledgement of the historical, contextual meaning of cross burning. "Without citing legal authority, the Minnesota Supreme Court stated that the burning of a cross is a symbol of violence and hatred based on 'virulent notions of racial supremacy .'" Petition for Writ at 5.

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[4] See also Watts v. U.S., 394 U.S. 705, 707 (1969) (true threats are not constitutionally protected speech); U.S. v. Orozco-Santillan, 903 F.2d 1262, 1265 (9th Cir. 1990) ("A 'true' threat, where a reasonable person would foresee that the listener will believe he will be subjected to physical violence on his person, is unprotected by the first amendment"); U.S. v. Mitchell, 463 F.2d 187, 191 (8th Cir. 1972) (violent threats are devoid of constitutional protection), cert. denied, 410 U.S. 969 (1973);" U.S. v. Salyer, 893 F.2d 113 (6th Cir. 1989) (court affirmed conviction for cross burning under 18 U.S.C. 241 and enhancement of sentence because Black family was unusually vulnerable to the threat of cross burning).

There can be no question that the example of cross burning in the case at hand is the very embodiment of racial violence and hatred,[5] a fact reflected in legal authority. "[A] black American would be particularly susceptible to the threat of a cross burning because of the historical connotations of violence associated with the act. ... [T]he act has a special capacity to evoke terror among black Americans. ... There is a history of violence and intimidation which

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[5] See Chalmers, Hooded Americanism: The History of the Ku Klux Klan, 15, 30, 41, 49, 63, 349-365, (1981) (school teachers tortured and murdered; Blacks whipped and burned with acid; public lynching; hideous torture; dynamiting of the mayor's home "under a blazing fiery torch" of a burning cross); Ridgeway, Blood in the Face: The Ku Klux Klan, Aryan Nations, Nazi Skinheads, and the Rise of a New White Culture, 24, 34, 68, 95 (1990); Sims, The Klan 46, 91, 104, 133, 144-5, 174-5, 193, 203, 253, 288, 298-9, 426-7 (1978) (bombings of homes, churches and school buses; arson of churches and houses; cross burnings; kidnapping and murder plots; shootings into crowds, cars and houses; floggings; stabbings; mutilations; hangings; castration; killings; the manufacture and buying of explosives and arms). See also Monroe v. Pape, 365 U.S. 167, 175-84 (1961) (testimony of members of the 42nd Congress as to how "a main scourge of the evil" of murders, whippings, lynchings, banishment, and arson left unpunished by the state was the Ku Klux Klan).

is directed against blacks and which is symbolized in a burning cross." U.S. v. Salyer, 893 F.2d 113, 116 (6th Cir 1989) (upholding sentencing enhancement for defendant who conspired to threaten and intimidate Black victims in the exercise of their civil rights by burning a cross at night in their yard in a predominantly white community). The Eighth Circuit Court of Appeals has quoted a victim of a cross burning on her own lawn who stated she "hope[d] they don't come up here and burn us up." U.S. v. Lee at 954. "[A] lot of the cross burnings in the South during the civil rights movement preceded hangings and that sort of thing. Of course, being a black, that is what it calls to mind." Id. at 956 n.5.

Congress repeatedly referred to cross burning as a precursor to or a promise of violence that government must counter when it passed the Hate Crime Statistics Act, 28 U.S.C. § 534 (hereinafter "Hate Crimes Statistics Act"). See 136 Cong. Rec. S1072, S1074, S1079 (1990)

(statement of Sen's. Simon, Hatch and Gorton). Given the history and context of racist violence, "obviously a black homeowner who finds a cross burning or simply planted on his lawn is experiencing an act of terror." Increasing Violence Against Minorities: Hearing Before the Subcommittee on Crime of the House Committee on the Judiciary 96th Cong., 2nd Sess. 83 (1980) (hereinafter "Increasing Violence Hearing") (statement of Irwin Suall, Anti-Defamation League of B'nai B'rith). As described in Congressional testimony, victims, and particularly Black families moving into previously all-white neighborhoods, "have crosses burned; they have their houses vandalized, burned to the ground. People who offer to sell or rent to minority families have their lives threatened." Racially Motivated Violence: Hearings Before the Subcommittee of the House Committee on the Judiciary (100th Cong., 2nd Sess. 18 (1988) (hereinafter "Racially Motivated Violence Hearings") (statement of Joan Weiss, Executive Director, National

Institute Against Prejudice and Violence). Organized violent white supremacists as well as unaffiliated perpetrators of racist violence "continue use of the burning of the cross ... as [an] instrument[] of intimidation." Id. at 14 (statement of Rev. C.T. Vivian, Chair of the Board, Center for Democratic Renewal). See also U.S. Commission on Civil Rights, Intimidation and Violence: Racial and Religious Bigotry in America, 10 (1983).

A. The state has a compelling interest in reducing the severe harm done to individuals and groups by bias-related violence.

There is overwhelming evidence of the likelihood of imminent violence, and of the injury inflicted by the conduct itself, as a result of actions such as those allegedly of R.A.V. Cross burnings in Kemah, Texas were followed by armed gunmen threatening the Vietnamese fishermen, and the burning of fishing boats owned by Vietnamese people in February 1981; in

February 1983 in North Carolina, crosses were burned and shots were fired into the homes of two interracial couples; and cross burnings in North Carolina's Iredell County have been accompanied by high-powered-rifle fire into homes. Vietnamese Fishermen's Ass'n v. The Knights of The Ku Klux Klan, No. H-81-895 (S.D. Tex. May, 14, 1981); Scott-McLaughlin, Center for Constitutional Rights, Racially Motivated Violence 4 (1984). Where the placement of a symbol that one knows will arouse anger and resentment on the basis of race, gender, creed, color, or religion rises to the levels delineated in Chaplinsky or Brandenberg, it is only an ahistorical and decontextualized view of reality that permits the assertion that there is no showing dangerous or unlawful action will result.

House burnings, lynchings, church bombings, and murderous shootings cause obvious harm no matter what the motivation. There is, however, ample evidence that violence motivated by prejudice has a

greater impact on its survivors than other forms of violent victimization. National Institute Against Prejudice and Violence, Vol. 5, No. 1, Forum 6 (1990). Victims of biased violence experience a much higher occurrence of serious behavioral and psychological symptoms stemming from the trauma. Id. See also J. Weiss, H. Ehrlich, B. Larcom, "Ethnoviolence at Work," (presented to the American Sociological Association, Aug. 23, 1991) (available from National Institute Against Prejudice and Violence). "The impact of ethnoviolence is traumatic and long-lasting. ... Their sense of personal violation is similar to that of the rape victim. ... They fear for their lives and those of their children. Some victims move away from communities, looking for a safe place." Racially Motivated Violence Hearings 24 (prepared statement of Joan Weiss). Cross burnings, the placing of Swastikas on synagogues, and other bias-related violence "create anxiety, unease, and concern about ... security. ... Emotional and psychological scars

can result from these crimes." 136 Cong. Rec. S1073 (1990) (statement of Sen. Hatch in support of "Hate Crimes Bill).

The devastating effects of bias-related harms have long been recognized by the judicial system. "It is well established that the victims of racial discrimination suffer physically and emotionally as a consequence of multiple incidents of harassment... ." Daniels v. Essex Group, Inc., ___ F.2d ___ No. 90-2663 (7th Cir. July 24, 1991) (1991 U.S. App LEXIS 16158 at 27-29) (affirming judgment for employee under Title VII who suffered ongoing racial harassment, including harassment by racist symbols).[6] Violence and threats motivated by violence are "particularly heinous" because the "effects

[6] The physiological and psychological symptoms of racial harassment include difficulty in breathing, rapid pulse rate, post-traumatic stress disorder, hypertension, alcoholism, and suicide, headaches, social withdrawal, chronic depression, anxiety neurosis, and displaced aggression. Daniels at LEXIS 29 n.3 (citing Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich.L.Rev. 2320 (1989).

are not felt solely by the individual against whom the crime is perpetrated. When a Jew in Nazi Germany was singled out, Jews around the world were intimidated by that act." 135 Cong. Rec. H.3185 (1989) (statement of Rep. Studds).

In addressing these harms, the government has an interest far greater than merely avoiding "controversial issues," Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530 (1980) or protecting "dignity". Boos v. Barry. This is not a case of "signs with political messages... classically political speech," id. at 318: the protection of offensive speech stops at the threshold of violence.

B. The State has previously articulated its compelling state interest in combatting bias-related violent conduct.

Petitioner also objected that "[w]ithout citing legal authority, the Minnesota Supreme Court stated that the burning of a cross ... was 'deplorable conduct the city of St. Paul may without question prohibit,' and that it

was the 'responsibility, even the obligation, of diverse communities to confront such notions in what ever form they appear.'" Petition for Writ at 5. Our society has long mandated that the state has the affirmative obligation to protect against threats or violence designed to interfere with civil or constitutional rights. Such protections, incorporating the duty to combat historic subjugation, are reflected in the 13th, 14th, 15th, and 19th Amendments to the U.S. Constitution; 18 U.S.C. §§ 241, 242; 42 U.S.C. 1981, 1982, 1983 (known in 1871 as the Ku Klux Klan Act), 1985(c); and 18 U.S.C. § 1091(a), (c) (Genocide Convention Implementation Act of 1987) (including as an offense the incitement to kill, injure, impair, or torture members of an ethnic, racial, national or religious group with the intent to destroy that group). Eliminating racist violence and intimidation is purportedly "national policy" in the United States. U.S. v. Price, 383 U.S. 787 (1966) (prosecutions concerning the murder of Chaney,

Scwerner, and Goodman); U.S. v. Guest, 383 U.S. 745 (1966); and Monroe v. Pape, 365 U.S. 167 (1961) (Ku Klux Klan Act of 1871 and its present forms are a means of enforcing § 5 of the fourteenth amendment, drafted specifically in response to Klan lawlesness). The Minnesota Supreme Court is not alone in finding that this social responsibility includes confronting bias-related violence. The Congress, in enacting the Hate Crime Statistics Act, recognized the destructive impact of activities such as cross-burning, anti-Semitic graffiti, and bias-related destruction and violence when it authorized the U.S. Justice Department to compile statistics on bias-related criminal conduct based on race, religion, sexual orientation or ethnicity.[7] The Congress responded to "disturbing signs that the number of hate

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[7] Although conduct directed at lesbians and gay men is not included in § 292.02, homophobic violence is extensive, severe, increasing, and systematically linked to the reign of terror against people of color. Racially Motivated Violence Hearings 59 (statement of Ms. Davis-McCoy) (members of the White Patriot Party shot five apparently men, perceived to be gay, in North Carolina).

crimes has skyrocketed in this country. ... (T)he New York City Police Department reported that hate crimes doubled in the last 2 years." 135 Cong. Rec. H3179 (1989) (statement of Rep. Schumer, supporting the Hate Crime Statistics Act). Cleveland, for example, has experienced an increase in racist violence of 200%, Racially Motivated Violence Hearings 14 (statement of Rev. C.T. Vivian). Organized white supremacist groups increasingly participate in paramilitary training and obtain explosives, mines, antitank weapons, and semiautomatic rifles. Racially Motivated Violence Hearings 58 (Statement of Christina Davis-McCoy, Field Organizer, North Carolinians Against Racist and Religious Violence). In January of this year, members of a racist, far-right group were indicted for theft of explosives and arms from the military. The Southern Poverty Law Center, 54 Klanwatch Intelligence Report 1, 6 (Feb. 1991).

The magnitude of the problem cannot be

overstated. "The National Institute Against Prejudice and Violence, based in Maryland, conservatively estimates that 1 out of every 5 minority persons experiences some form of victimization based on prejudice every year." 135 Cong. Rec. H3185 (1989) (statement of Rep. Cardin). "[A] Los Angeles County Human Relations Commission report showed that Asians were victims of 24 percent of the hate crimes committed in 1986, up 14 percent from 1985. There is also evidence of growing Klan, neo-Nazi, Skinhead and other hate group activity throughout the Nation." 135 Cong. Rec. H3182 (1989) (statement of Rep. Green).

Embodied in the very need for Congress to pass legislation that distinguishes "hate crime" violence from other violence is a recognition that "arson based on racism is quite different than arson for any other reason." Racially Motivated Violence Hearings 16 (statement of Rev, Vivian). "The death of Michael Griffith in the Howard Beach neighborhood of Queens

is not just a hit and run, a cross-burning on a front lawn is more than arson," according to Representative Kennelly from Connecticut, the original author of the bill. "Hate crimes motivated by political, religious or social intolerance need to be distinguished from other crimes." 135 Cong. Rec. H3182 (1989) (statement of Rep. Kennelly).

The responsibility and obligation to grapple with this violence and terror has been eloquently stated: "due to discrimination by some, certain individuals enjoy lesser freedoms, [and] it is our responsibility to restore equity." 135 Cong. Rec. H3188 (1989) (statement of Rep. Brennan). In the fact of racist terror and violence, "we need to send a resounding message to the people of this country that we are not going to put up with these hate crimes any longer." 136 Cong. Rec S1073 (1990) (statement of Sen. Hatch). The state must act, within permissible boundaries, because "segments of our society have been the victims of the heinous acts of

cowardly thugs who strike only when they sense a climate of dominance." 135 Cong. Rec. H3180 (1989) (statement of Rep. James).[8]

These compelling state interests in restricting conduct such as that of R.A.V must be balanced against the state interest in allowing absolute freedom of expression if the Court finds that this statute infringes protected speech. Cross burning on the property of a Black family in a mostly white neighborhood in the dead of night does not provide "the time to expose through discussion the falsehood and fallacies" of speech. Whitney v. California, 274 U.S. 357, 377 (1927)

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[8] The state has, in the past, contributed to the climate of dominance: by "not acting sufficiently to protect the rights of these groups," Racially Motivated Violence Hearings 12 (statement of Rep. Conyers, Chair); Id. at 108 (statement of Douglas Seymour, Special Assistant, Center for Democratic Renewal) (by failing to carry out prosecutions, and by police destroying records of white supremacist organizations); Id. at 54 (statement of Rev. Benjamin Hooks) (by assaulting affirmative action and women's rights); Increasing Violence Against Minorities 41-42 (prepared statement of Arthur Kinoy, Center for Constitutional Rights citing information from the Rowe Task Force Report) and Ridgeway at 72-4 (by being complicit in violence against Blacks).

(holding overruled in Brandenberg, but generally, Brandeis advising that in most cases, the "remedy to be applied is more speech.") Conduct reachable under § 292.02 is that in which the "incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion." Id. at 377. For the five elderly Black women of Chattanooga shot by Klan members who mobilized for their ride of terror and violence by burning a cross at a prominent location, there was no opportunity for 'full discussion.' Complaint at 5-8, Crumsey v. The Justice Knights of the Ku Klux Klan, No. CIV-1-80-287 (E.D. Tenn. Mar. 1, 1982). If the "right conclusions are more likely to be gathered out of a multitude of tongues," New York Times v. Sullivan, 376 U.S. 254 (1964) (citation omitted), we must realize that centuries of violence, if allowed to continue, inhibit the participation of some certain tongues.

Where the "best test of truth is the power of the

thought to get itself accepted in the competition of the market," Abrahms v. U.S., 250 U.S. 616, 630 (1919) (Holmes, J., dissenting), such dialogue is not facilitated by conduct that silences. For the 3,500 people lynched from 1866-1875, Scott-McLaughlin at 5, racist violence did not serve to enlighten nor to stimulate greater discourse, bringing society closer to the truth. An imminent threat of violence, borne out by centuries of vicious brutality, is not designed nor does it serve to invigorate public dialogue or "produce a more capable citizenry and more perfect polity." Cohen v. California, 403 U.S. 15, 24 (1971). An infiltrator of the Klan for the San Diego Police Department explained that "If they needed to terrorize and intimidate people through burning crosses and other such activities, they would do that." Racially Motivated Violence Hearing 107-08 (statement of Douglas Seymour, Special Assistant, Center for Democratic Renewal). Neither the purpose nor the effect of cross burning is to engage in lively debate: it

is and has been to terrorize, to intimidate and to spark violence, even murder. The effect of the conduct proscribed by § 292.02, "tantamount to intimidation by threat of physical violence," Lee at 956, chills the expression of its targeted victims, as well as infringes their right to live, work, go to school, vote, make contracts and raise families with equal freedom as other citizens. We cannot "assure unfettered interchange of ideas for the bringing about of political and social changes." Roth v. U.S., 354 U.S. 476 (1957) if we protect the purveyors of racist violence but not the victims.

C. The ordinance, as judicially construed, is a narrowly tailored means to serve the state interest

§ 292.02 is narrowly tailored to serve the state's compelling interest in forestalling the extensive harms of bias-related violence. It proscribes only biased conduct that crosses the threshold into a directed, imminent, likely, concrete, incitement to lawless action, Brandenberg and its progeny; or when extremely personally offensive fighting words inflict injury or tend to incite an immediate breach of the peace in a manner that is directed to an individual, face to face, Chaplinsky, Norwell v. City of Cincinnati, 414 U.S. 14 (1973), Gooding v. Wilson, Lewis v. New Orleans, 408 U.S. 518 (1972). The proscription of such biased conduct is "intimately related" to substantial government interests in public safty and equal protection, as required by Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 637 (1980). In Schaumburg, the state interest was only peripherally

promoted," and there was only an indirect relationship between the restriction on expression and the interest of the state. Id. at 636. In the case at bar, however, the restrictions are not an "imprecise tool" to achieve the legislative purposes. Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984). The link between terroristic acts like midnight cross burnings and violence is irrefutable and examples abound. See e.g., Center for Democratic Renewal, Weekly Update (June 5, 1989, Sept. 11, 1989, Oct. 23, 1989) (cross burnings accompanying a shooting, vandalism, torching a house, and rock throwing). With precise, direct promotion of the state interest, § 292.02 is appropriately narrowly tailored.

III. § 292.02 SERVES A COMPELLING STATE INTEREST IN ADDRESSING SEXIST VIOLENCE

Under St. Paul City Ordinance 292.02, gender is one of the grounds upon which disorderly conduct can

be established. Petitioner blithely dismisses this as evidence that § 292.02 is "subject to the changing political climate ... and the consensus of the majority." Brief for Petitioner at 19. The need for legislation, however, addressing violence and disorderly conduct on the basis of gender has long been evident: every 18 seconds, a woman is beaten, and every three and a half minutes, a women is a victim of a rape or an attempted rape. Women, Violence and the Law: Hearing Before the House Select Committee on Children, Youth and Families, 100th Cong., 1st Sess. 1 (1987) (hereinafter "Women, Violence and the Law Hearing) (statement of Rep. Miller, Chair).[9] Violence against women as gender-related biased crimes takes many forms: marital rape is one of the most egregious forms of violence, and it is still not treated as a crime

[9] See also Centre for Social Development and Human Affairs, United Nations, Violence Against Women in the Family 4 (1989) (official international concern about violence against women).

in over half the states of this country. Women, Violence and the Law Hearing at 29 (statement of Elizabeth Holtzman, District Attorney, Kings County, NY). Domestic violence is another gender-based crime perpetrated against women; the FBI estimates that a woman is beaten every 18 seconds in domestic violence in the United States, and as many as 6 million women are battered every year. Id.

The long-term results of such assault is devastating: a New York City study found that half of the women who attempt or commit suicide are battered women. Id. Survivors of sexual crimes of violence may sustain physical damage, and commonly suffer severe emotional and psychological injury. J. & H Schwendiger, Rape and Inequality 31 (1983). Additionally, the harm of gender-based violence falls disproportionately on Black women, C. Wolf Harlow, U.S. Dept. of Justice, Female Victims of Violent Crime (Jan. 1991); Williams, Violence Against Women, 12 The

Black Scholar 18 (1981) and lesbians of Color, G. Comstock, Violence Against Lesbians and Gay Men 37, 38 (1991).

It is incumbent upon society to respond specifically to the problem of gender-based threats and attacks because "[v]iolence against women is the most visible and the most odious form of discrimination against women, and it is largely a symptom of the broader refusal of society we live in to recognize the humanity and dignity of women that derives from a recognition of their equality." Women, Violence and the Law Hearing at 32 (statement of Elizabeth Holtzman). § 292.02 is a narrowly tailored means of serving the compelling state interest in opposing violence against plaintiff.

IV. THIS COURT SHOULD NOT FORECLOSE THE USE OF "HATE CRIME" LEGISLATION TO OPPOSE RISING HOMOPHOBIC VIOLENCE

The scope of the harms inflicted by bias-related

violence extend beyond those foresen in § 292.02: lesbians anbd gay men are subject to horrendous violence. With Petitioner declaring that "[t]his case provides a logical and appropriate setting for this Court to ... clarify the standards for deciding the constitutionality of 'hate crime' legislation," Petition for Writ at 13, it is essential to briefly examine the state's compelling interest in regulating homophobic violence. This interest is evident in the fact that sexual orientation was incorporated into the Hate Crime Statistics Act § 1(b)(1), and homophobic violence has been specifically restricted by 15 states, 11 municipalities, and the District of Columbia. The summary of the "Hate Crimes" bill that the Senate passed in February 8, 1990, noted that, from 1985-1986, the number of sexually oriented bias crimes had more than doubled." 136 Cong. Rec. S1069 (1990) (Sen.

briefing paper).[10] Studies reveal that slightly more than half of socially active Lesbians and gay men experience some type of anti-Lesbian or -gay violence. G. Comstock, Violence Against Lesbians and Gay Men 37 (1991). Lesbian and Gay individuals were four times more likely to be victims of violent crime than people in the general urban population. Antigay Violence: Hearings Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 99th Cong., 2nd Session 3 (1986) (hereinafter "Antigay Violence Hearings) (statement of Kevin Berrill, Director, Violence Project, National Gay and Lesbian Task Force; G. Comstock, Violence Against Lesbians and Gay Men 55 (1991)).

A full 35% of the incidents of violence involve

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[10] See also Antigay Violence Hearings 6 (statement Diana Christensen, citing records showing a 50% increase in incidents of antigay violence from 1984-85); Id. 9 (statement of David Wertheimer, Executive Director of the New York City Gay and Lesbian Anti-Violence Task Force, noting 41% increase 1984-85 and 91% increase 1985-86 in caseload for direct services).

the use of weapons, and 35% of all survivors require medical attention, Antigay Violence Hearings 3 (statement of Diana Christensen, Executive Director of Community United Against Violence), and up to 16% of respondents report being raped because of their sexual orientation. Comstock at 40. As a pattern, the American Psychological Association noted that homophobic attacks "tend to be more violent than other physical assaults." Antigay Violence Hearing 12 (1986)(statement of Dr. Gregory Herek, American Psychological Association). Health care workers have reported that attacks against Lesbians and gay men "were the most heinous and brutal I encountered. ... They frequently involved torture, cutting, mutilation, and beating, and showed the absolute intent to rub out the human being because of his [sexual] orientation." Comstock at 46.

A survivor of homophobic violence must not only recover from physical and psychological harm, but also

risks being fired, evicted, or denied services if their sexual orientation becomes public. Antigay Violence Hearings 13 (statement of Dr. Gregory Herek).[11] States must not be precluded from using narrowly tailored means to serve the compelling state interest in stemming the tide of violence against lesbians and gay men, just as they must be able to work to eradicate threats and violence on the basis of race and gender.

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[11] With Bowers v. Hardwick allowing states to criminalize intimate relations of Lesbians and gay men, there is "effectively create[d] a cultural climate in which individual expressions of homophobia, including violence, are tolerated or even encouraged." Antigay Violence Hearing 13 (statement of Dr. Gregory Herek).

CONCLUSION

In the face of imminent threats of violence -- threats that are entirely credible in light of the reality and the history of rampant racist and sexist brutality -- the state should be able to protect the lives, safety, and well-being of the individuals under attack. Petitioner's efforts to obscure this fact by invoking notions of "reverse intolerance" and "intellectual intimidation" must be dismissed as irrelevant, and incorrect. Petition for Writ at 8. § 292.02, preventing only the most egregious acts of biased violence, cannot be said to "legislate social intolerance" unless criminal statutes can be said to be similarly 'intolerant' of violence, assault, and murder.

From the vantage point of those lynched and raped, these laws may increase the likelihood of living without arson; assault; having to move; or having a church, home, temple or judge's chambers bombed. Petitioner claims that what the state intends to illegitimately increase is "understanding." If 'increased

understanding' on the part of members of dominant groups is a byproduct of the reduction of bias-related violence, it is not to be avoided, but the thrust of such laws is to protect the victims from real harms, not to enlighten the perpetrators.

Petitioner attempts to belittle the necessity of protecting historically oppressed groups and individuals from continuing threats and violence by equating that necessity with the desire to "avoid having one's feelings hurt." Petition for Writ at 8. Not all disruptive or controversial speech, however, is steeped in centuries-long tradition of violent attacks. Blacks, Latinas and Latinos, Native Americans, Asian Americans, Jews and lesbians and gay men are among the groups which have historically been subject to violent attack. It is a manifest distortion of reality to claim there is an undifferentiated slippery slope leading from the midnight cross burning trespasser, to the speaker on communism or lesbian rights who offends and angers

those who oppose those views. Only the former acts, within a contextual history of violent attack, to subject a group of people to terror and utilizes a symbol which has been the prelude to widespread and severe violence.

The links between these specific acts which trigger, signal, or accompany violence have proven to be direct and intimate. The Klan, for instance, responsible for innumerable killings shootings, beating, stabbings, house bombings, church and temple bombings, and acts of arson,[12] "intimidates its intended victims by terroristic signs and symbols, especially cross burnings." T. Clark, The South Since Reconstruction, 505 (1973). The violence and the terrorization may have changed forms somewhat since slavery, and since 1871, when 297 Black people were lynched in one month in New Orleans, Scott-McLaughlin at 5, but racist

[12] Chalmers at 349-65, citing report published by the Friends' Service Commitee, National Council of Churches of Christ, and the Southern Regional Council in 1959.

intimidation or "disorderly conduct" under § 292.02 is set in a historical context where the threat and the culmination of violence are very real. As recently as August 30, 1991, a young man of color was found hanging from a tree with his hands tied behind his back. Seattle Times, July 31, 1991, at 1,8.

For those people of color, women, lesbians and gay men not actually killed by bias-motivated violence, the costs are still severe. Members of targeted groups are "denied personal security and liberty," Matsuda at 2321, and retain only second-class citizenship in a country failing to live up to its promise of equal protection. With the government condoning, or at the least, remaining indifferent to bias-related violence, it is perpetuated institutionally: "gutter racism, parlor racism, corporate racism, government racism ... work in coordination, reinforcing existing conditions of domination. Id. at 2335.

Race, gender, class, sexual orientation, religion,

and other characteristics determine how much access one will have to the marketplace of ideas, and whether, for example, one will be lynched for one's expression, as was fourteen year old Emmet Till.[13] The mere fact that the government does not interfere with the 'liberty' to speak does translate to a right of freedom of expression for people of color and women who "are the objects of a constitutional omission which has been incorporated into a theory of neutrality." Williams, "The Obliging Shell," 87 Mich. L. Rev. 2128, 2142 (1989). In the experience of another Black woman, "speech has never been free, and racism has always been quite costly." Ransby, "Racism and Free Speech," The Agenda (June 1989) (Ann Arbor, MI). [14]

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[13] Emmet Till was a young Black man, kidnapped and murdered by two white men for allegedly whistling at a white woman. An all white male jury acquitted the two men, even though they admitted to kidnapping Till. T. Clark, The South Since Reconstruction 425 (1973).

[14] While Petitioner claims that it is the assertion of rights and identity that causes "'balkanization' among groups," Brief for Petitioner at 19 n.11, it is in fact practices of subordination

There is a need for policies against bias-motivated threats not because such speech is rude and insensitive, but because there is a deep and pervasive problem of institutional racism and sexism which impacts, often violently, on the targeted groups and individuals. Bias-related violence is but one form of subordination of powerless groups: subordination that denies people access to the systems that control their lives and constrains their ability to obtain adequate food, shelter, education, health care, employment; subordination that prevents people from living in intimate relationships, having healthy families, and developing an empowered community. The strands of physical violence, economic violence, emotional violence are among those woven

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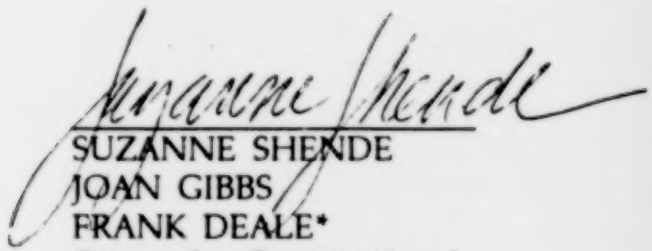
like "odious hate crime [that] pits nationalities, races, and religions against one another, thereby tearing at the fabric of a nation that can survive only when its citizens harmonize their differences." 135 Cong. Rec. H3180 (1989) (statement of Rep. Gekas). In a pluralistic society, we cannot overcome inequality by denying real differences in power, culture, history, and identity, nor by forcing the least empowered to bear the burdens of an "act of tolerance." Brief for Petitioner at 35 n. 31.

into the tight-knit web of domination and exclusion. Proscribing bias-related violence is only a step, but it is a necessary step towards the elimination of inequality.

Accordingly, and for the reasons set forth above, this Court should affirm the judgment of the Minnesota Supreme Court and find § 292.02, as judicially narrowed and as applied, constitutional.

Respectfully submitted,



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APPENDIX

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STATEMENTS OF INTEREST

The CENTER FOR CONSTITUTIONAL RIGHTS (CCR) was created in 1966 by lawyers who were active in the civil rights movement and the struggle of women and ethnic minorities in the United States for true equality. CCR attorneys have been involved in cases concerning voting rights, community control of schools, fair housing, employment discrimination, jury composition, and international human rights. Through litigation and public education CCR has worked to make meaningful the constitutional statutory, and international rights of women, Blacks, Puerto Ricans, Native Americans, Asians, and Chicanos.

The Center for Constitutional Rights joins with amici to urge the Court to uphold this ordinance, which represents the attempts of local governments nationwide to combat the escalating violence against People of Color, women, and other historically oppressed groups. Failing to uphold this statute, which threatens no constitutionally

protected expression, will send the dangerous message that this society, at its highest levels, will continue to tolerate vicious brutality directed against people because of their race, ethnicity, gender, sexual orientation and religion.

* * *

The CENTER FOR DEMOCRATIC RENEWAL (CDR) is a national, non-profit, tax-exempt clearinghouse for information on constructive, non-violent responses to hate group activity and bigoted violence. Founded in 1979 as the National Anti-Klan Network, today the CDR conducts programs of research, leadership training, community organizing, public education and litigation.

With offices in Atlanta, Georgia, Kansas City, Missouri, and Seattle, Washington, the CDR also aids the victims of bigoted violence through telephone counseling and emergency assistance. The CDR serves a diverse constituency of more than 10,000 members and supporters throughout the United States.

The CDR believes that municipal, state and federal legislation addressing the problem of hate crimes can both deter acts of bigoted violence and send a strong signal that such acts are not sanctioned by the community. The CDR wishes to join as an amicus curiae in this case in order to lend the perspective of a national, multi-racial, interfaith organization dedicated to preserving and enhancing the rights of all persons victimized by bigotry and intolerance. The CDR is of the belief that the constitutionality of the St. Paul, Minnesota, ordinance in question should be upheld.

* * *

The GREATER BOSTON CIVIL RIGHTS COALITION (GBCRC) was founded in 1979 to address increases in racial, religious and ethnic violence within the Greater Boston area. The coalition was founded during the height of the busing and desegregation controversy that racked the city of Boston. Today, the GBCRC is a coalition of over 100 private and public civil rights, law

enforcement, religious, community and grass roots organizations who meet together regularly to discuss issues of discrimination based on race, religion and ethnic origin. Among the priorities of the BGCRC, four have remained paramount over the past decade of the GBCRC's work:

*Advancing the progress of civil rights by fostering harmonious racial, religious and ethnic relations.

*Improving communication among participating organizations.

*Training of law enforcement personnel in dealing with hate crime and violations of civil rights.

*Focusing on shaping public and private policy as it relates to discrimination in the political, economic and social realms.

*Advocating for the effective use of civil rights laws to deter hate crimes.

The GBCRC took the most prominent role of any organization in gaining the enactment of the

Massachusetts Hate Crime Reporting Act, signed into law in December of 1990. That Act mandates the collection of hate crime data for the first time in the history of the Commonwealth; in direct response to the work of the Coalition, Governor William Weld recently appointed a Hate Crime Reporting Implementation Task Force, on which the GBCRC has several seats.

The Coalition members support legislation to recognize the severity of hate crime and its resounding impact on effected communities. The Coalition strongly believes that hate crime perpetrators should be punished for their acts, and that such punishment sends a message to both the victimized community and its victimizers: that acts of terror and hate based on the race, religion or ethnic background of an individual or a community will be punished. We firmly support the right of communities to enact legislation which consistent with first amendment protection prohibits unlawful hate crime. We firmly support the application of the St. Paul ordinance to

combat the hate crime in the instant case.

* * *

The INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), is a labor organization with approximately one million members headquartered in Detroit, Michigan. The UAW is an industrial union representing private and public employees throughout the United States.

Since its inception in the 1930s, the UAW has been an instrumental part of the Civil Rights movement in the United States. In the 1940s, the UAW established a Fair Practices Committee to monitor and improve the treatment of workers in the plants and to strive for broader racial justice in society. In the 1950s and 1960s, the UAW worked with its allies for desegregation, voting rights, equal employment opportunity, and fair housing. In the 1970s, the union won contractual non-discrimination protection in its collective bargaining agreements and the

establishment of Civil Rights Committees in its local unions. In both the 1970s and 1980s, the UAW supported the adoption of improved federal, state, and local legislation protecting minorities, women, and others subjected to the discrimination and bigotry still all too prevalent in our society.

Despite the progress made in the last sixty years toward racial justice in this county, there remains a strong undercurrent of virulent racism and sexism which too often manifests itself in hate crimes, violence, threats, and intimidation. In response, many states and localities have enacted legislation intended to protect citizens from the tangible harm which results from being subjected to these actions. In order to support these state and local initiatives, the UAW joins in this amicus brief.

* * *

The NATIONAL COALITION FOR BLACK LESBIANS AND GAYS (NCBLG) is the oldest Black organization in the country working to advocate and

promote the empowerment and enhancement of the lesbian and gay community. Formally a chapter organization with branches in Baltimore, Chicago, Detroit, New York and Oakland/San Francisco, the national office is located in Washington D.C. We have over 500 members nationally and our numbers are on the increase.

NCBLG is presently working and addressing legislative policy and educational concerns that constantly confront the diverse communities of the country. NCBLG finds that there is a need in the community for workshops, seminars, and lectures to provide training on these issues, as well as other initiatives such as our Project Dialogue, HIV/AIDS information and the Leadership Development series.

Since NCBLG began in 1979, it has been dedicated to equal rights and civil liberties for the entire community regardless of race, gender, or sexual orientation. In spite of the strides that have been accomplished in the last 50 years, injustice continues to be prevalent. This is evident

by the increase of hate crimes throughout the country. NCBLG wishes to join other progressive organizations which work to protect all citizens from the physical and psychological harm which may be a by-product of these bias-related crimes.

* * *

The NATIONAL CONFERENCE OF BLACK LAWYERS (NCBL) is a non-profit organization founded in 1968, and comprised of over 2500 lawyers, law students, legal workers and other individuals working for social justice. NCBL and its members engage in affirmative litigation and activities to challenge and correct acts of injustice based on race, sex, religion and other irrational biases. Cross burning is without question such an act. We agree with the Minnesota Supreme Court's characterization of cross burning as a symbol of violence and hatred based on notions of racial supremacy. Because cross burning represents the kind of abominable "speech" that we are working to eliminate, NCBL joins

the other amici in urging this Court to uphold the Minnesota statute as constitutional.

* * *

The NATIONAL COUNCIL OF LA RAZA (NCLR), the largest constituency-based national Hispanic organization, exists to improve life opportunities for the more than 22 million Americans of Hispanic descent. NCLR acts as an umbrella organization for its 139 affiliated Hispanic community-based organizations, which together serve 35 states, the District of Columbia, and Puerto Rico and reach more than one million Hispanics annually. NCLR has four missions: applied research, policy analysis and advocacy on behalf of the entire Hispanic community; capacity-building assistance to support and strengthen Hispanic community-based organizations; public information activities designed to provide accurate information and positive images of Hispanics; and special innovative, catalytic, and international projects. In addition to its Washington, D.C.

national headquarters, NCLR maintains field offices in Los Angeles, California; Phoenix, Arizona; McAllen, Texas; and Chicago, Illinois.

NCLR has long recognized that Hispanics are frequently the victims of hate crimes and the targets of violent threats and intimidating behavior (i.e., "fighting words") because of prejudice toward national origin characteristics such as physical appearance, language or speech accent, and cultural characteristics. NCLR is, therefore, particularly interested in the St. Paul crossburning statute case, R.A.V. v. City of St. Paul, because of its important implications for the maintenance of constitutional protection from such dangerous behavior. NCLR would like to join this amicus brief to show its support for the position that the prohibition of intimidating and harassing conduct in the subject case is constitutionally permissible.

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The NATIONAL INSTITUTE AGAINST PREJUDICE AND VIOLENCE (NIAPV) is the only national center dedicated exclusively to the study of and response to violence motivated by prejudice - "ethnoviolence". Founded in 1984, NIAPV is a not-for-profit tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. NIAPV conducts research on the causes of ethnoviolence and its effect on victims and communities; serves as a clearinghouse of information; and provides education and consultation including human relations training, legal and policy analysis, and assistance to agencies and organizations.

NIAPV has conducted pioneering research on the prevalence and impact of ethnoviolent victimization on college campuses, in the workplace, and in the larger community. In its National Victimization Survey, the first national study of its kind, NIAPV established that acts of violence motivated by prejudice have greater traumatic impact on victims than do other forms of victimization.

In addition, NIAPV is publisher of the most comprehensive legal manual available on criminal and civil remedies for violence motivated by prejudice.

Intergroup prejudice and violence tear at the very fabric of our society. NIAPV believes that states have a compelling interest in protecting both individual victims and the larger community through legal remedies which recognize the unique harm inflicted by acts of bigoted violence. NIAPV further believes that in tailoring criminal sanctions and civil remedies to address this unique harm, states do not thereby infringe on our precious First Amendment freedoms as they have been defined in decisions of the United States Supreme Court.

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The NATIONAL LAWYERS GUILD (Guild) is a national organization representing over 10,000 lawyers, legal workers, law students and jailhouse lawyers in over 200 chapters throughout the United States. Since its founding in 1937, the Guild has provided legal support to

virtually every struggle in this country for economic, social and political justice.

The rise of hate and bias related acts in the form of speech and conduct in the past several years presents this society with the challenge to reconcile civil liberties principles of equal protection and free expression. The Guild opposes bias, bigotry, and discrimination on the basis of race, gender, sexual orientation and religion. When acts of hate, viewed in their historical context of perpetuating racial supremacy, infringe upon the ability of people of color and others to enjoy equality free of racial discrimination, the actor ought to be punished by the law. Examples of such acts include cross burnings, the placement of swastikas and the intimidating wearing of the Ku Klux Klan hood.

The National Lawyers Guild joins with the other amici curiae in this important case of public concern to present its views on the legal effort to combat White supremacy.

* * *

The NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES (NOBLE) is a non-profit organization of police chiefs, agency heads, command-level law enforcement officials and criminal justice educators whose membership is numbered at approximately 2400. NOBLE's goals are to develop, implement and manage innovative ideas, concepts and programs aimed at reducing violence, crime, and the elimination of racism in the criminal justice arena. NOBLE was founded in September, 1976, during a three day symposium co-sponsored by the Police Foundation and the Law Enforcement Assistance Administration (LEAA).

Consistent with its motto, "Justice by Action," NOBLE aggressively pursues its goals by conducting substantive research, speaking out on the issues and performing a variety of outreach activities. NOBLE's success in this arena is reflected by its growth and the major role it has played, and continues to play, in shaping policy in areas of vital importance to minorities and the law enforcement community. NOBLE has effectively used

the judicial process and direct correspondence to express opinions and concerns. NOBLE has endorsed strategies that provide a holistic approach to crime and violence and proactive police-community involvement.

What has come to be known as hate violence, racial and religious violence and harassment was first researched by NOBLE in 1983. NOBLE received funding from the National Institute of Justice (NIJ) to do research on the problem and to develop model policies and procedures for law enforcement agencies.

As a result, NOBLE published a law enforcement handbook that outlines a model response to racial and religious violence which is used broadly by the law enforcement community and social service practitioners. NOBLE provided education and advocacy that resulted in the passage of federal legislation requiring the collection of data on the occurrence of hate violence incidents. With a grant from the Ford Foundation, NOBLE has drafted a training program and produced a videotape for law enforcement workers on racial violence entitled

Hate Crime: a Police Perspective aimed at training police officers in effective procedures for handling hate crimes. In addition, NOBLE has developed a training curriculum to deal with cultural clashes on college campuses. The curriculum is designed to sensitize college administrators, students and law enforcement personnel to the issue of racism.

Consequently, we are particularly interested in supporting the constitutionality of the city of St. Paul's ordinance that is the subject of this amicus brief, and we wish to join in this amicus brief.

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The UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE (CRJ) is the national civil rights agency of the 1.6 million-member United Church of Christ. The Commission has long been actively in-volved in the struggles for racial justice and social equality of African Americans and other minority communities in the United States. Established in 1963 by the General Synod of the United Church of Christ in response to the assassination of Medgar Evers, the Birmingham

church bombings, and the heightened racial tension then gripping the nation, CRJ has been at the forefront of the civil rights movement as a church-based agency of a major U.S. Protestant denomination.

CRJ programs have focused on a diverse range of issues, including: African American family life, capital punishment and penal reform, voter registration, racially motivated violence, child abuse, displaced homemakers,battered wives, teenage pregnancy, welfare hotels and homelessness, persons with disabilities, computer literacy, environ-mental racism, the empowerment of African American, Hispanic American, Asian Pacific American and Native American communities, and increasing the percentage of minority students in colleges through its scholarship program.

For 29 years the Commission for Racial Justice has fought racial bigotry in all of its expressions. We deplore acts of racist violence and see this case as a major opportunity for the court to affirm local governments in their efforts to thwart bias-related violence. Incidents of racist violence are occurring daily across this country. Equal rights and human rights must be extended

to all, and not diminished by racist, violent acts of others.

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The YOUNG WOMENT'S CHRISTIAN ASSOCIATION OF THE U.S.A. (YWCA) is a national membership organization serving 2 million women and their families dedicated to the empowerment of women and the elimination of racism. Since 1858, the YWCA of the U.S.A. has addressed the critical connection between providing services for women, girls, and their families and acting to correct societal conditions that create the need for those services. Our members represent varied economic, social, racial, ethnic, and religious groups committed to the struggle for justice and equity and peace.

The YWCA's One Imperative, "To thrust our collective power toward the elimination of racism wherever it exists and by any means necessary," stems from our commitment to this struggle. In both our programmatic and our advocacy work we are particularly concerned with the growing numbers of racially motivated acts of violence and targeted expressions of hatred.

We believe that properly drafted statutes may be a

significant deterrent to expressions of bias engendered hatred and bigoted violence. When one individual of an historically oppressed group becomes victim to a crime based on her or his membership in that group, all members of the group experience fear and intimidation. The YWCA of the U.S.A. wishes to join as amicus curiae in this case to contribute our unique perspective of a multi-ethnic, interfaith women's membership movement with the imperative to eliminate racism. We are of the opinion that the constitutionality of the St. Paul, Minnesota, ordinance in question should be upheld.